In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1016

WILLIAM H. FRAZIER AND CLARICE REED,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On March 20, 1964, an indictment was returned in the United States District Court for the Middle District of Tennessee charging petitioner Frazier with attempting to evade and defeat income tax for the years 1958, 1959 and 1960 by filing false and fraudulent income tax returns for those years, in violation of Section 7201 of the Internal Revenue Code of 1954, and petitioner Reed with aiding and abetting

Frazier, in violation of 18 U.S.C. 2 (R. 8a-10a). The bill of particulars charged that Reed's participation consisted of her "permitting [Frazier] to hold assets and make expenditures in her name [and] by cooperating with him in the concealment of his ownership of assets held in her name" both during the tax years involved and during the investigation which followed (R. 15a). Trial by jury was waived. Both defendants were found guilty as charged. Frazier was fined $6,000 and sentenced to five years' imprisonment. Reed was sentenced to three years' imprisonment. (R. 16a-19a.) The court of appeals affirmed the convictions *per curiam* (Pet. App A). Further review is not warranted.

1. The government's case was tried on the net worth method. After the underlying evidence had been established by stipulation or proof, the government began its computations with the combined net worth of Frazier and Reed, who were shown to have had close business and personal relationships and to have commingled funds (R. 145b). The next step was to divide the total between Frazier and Reed—showing the net worth of each separately—on the basis of who had furnished the money for the acquisition of the assets (R. 147b). This showed that Frazier had understated his taxable income by more than $70,000 over the three-year period covered by the indictment. More than 80 percent of the unreported income was accounted for by one item, Frazier's investment in the Parkview Motel and Res-

taurant (see pp. 4-6, *infra*). It was also shown that during the prosecution years Frazier had had a lucrative source of unreported taxable income in the numbers business, which he conducted on a large scale (R. 26a-27a, 178a, 36b).

The government traced the financial and income tax return history of Frazier from 1939 through 1960 (R. 6b, 7b, 8b) and that of Reed from 1941 through 1960 (R. 13b, 20b, 21b, 73b, 149b), and established that the increase in net worth could not have stemmed from a prior accumulation of funds. The evidence showed that Frazier had been in jail continuously from April 1937 until December 1952, with the exception of about two months in late 1939 (R. 28a-29a); that he had never filed an income tax return until 1953 and that his return for that year had shown no taxable income (R. 158a); that his tax returns for 1955, 1956 and 1957 showed adjusted gross income of $500, $3,000 and $4,500, respectively (Govt. Ex. 7; R. 147a-148a); and that his net worth, $6,909 at the end of 1957, had increased to slightly more than $100,000 by the end of 1960 (R. 147b). Frazier declined to furnish the Treasury agents with any leads to sources of non-taxable income (R. 67b-68b). It was stipulated that he had never received any inheritance from any relatives (R. 139b).

The evidence of Reed's financial history showed that when she had been ill in 1941 her family had helped pay the bills (R. 10b-11b); that from 1941 to 1948 she had worked as a sales girl, never averaging

more than $35 per week (Govt. Ex. 13); and that from 1948 to 1957 she had made various small investments in homes and small businesses, all of which were carefully traced (R. 149b). All known nontaxable sources of income of Reed were taken into account in the computations. However, she was not given credit for a claimed cash hoard of some $32,000 —consisting of alleged gifts—to which she testified at the trial. This claim was inconsistent with pretrial admissions by her to the effect that she had never kept any large sum of cash on hand and that she was just a poor working girl. (R. 110a, 60b, 69b.)

The major controversy at the trial was over the inclusion in Frazier's net worth of an investment, made in the name of Reed, in the Parkview Motel and Restaurant. This was an enterprise started by one Berryman, who had invested a total of between $85,000 and $90,000 in it by 1958 (R. 67a-68a, 79a). Berryman testified that in 1958 he had discussed with Frazier and Reed a proposition that they buy a 25 percent interest in Parkview, and they had agreed to do so (R. 80a-81a); that Reed paid over to Berryman the first $30,000 payment in bills of ten, twenty and fifty-dollar denominations (R. 81a); that Frazier told Berryman that he could not put it in his own name because "[t]he government might grab this money some time later" and that it was agreed, therefore, that it would have to be put in Reed's name (R. 80a); that early in 1959 Frazier had told Berryman he wanted a 50 percent interest rather than 25 per-

cent and Berryman agreed to sell it for an additional $30,000; that $25,000 more was then turned over to Berryman in cash and the final $5,000 was paid in "dribbles" (R. 81a-82a); and that in April 1959 Frazier deeded a one-half interest in Parkview to Miss Reed (R. 82a). Frazier denied at the trial that he had ever invested any money in Parkview (R. 144a), and Reed denied paying Berryman anything except the $10 consideration recited in the deed (R. 169a). However, when the Frazier-Reed interest was transferred in 1960 to one Sheridan, in exchange for a $60,000 mortgage, Reed got the mortgage (R. 109b-110b). Her version was that this $60,000, plus $8,436.12 she had withdrawn from the business in the interim, represented payment for her services (R. 169a, 171a-172a, 110b). By her own testimony, however, her duties were never more than menial (R. 172a), and Berryman said that she kept the books and handled the money (R. 87a). Reed's version of the transaction—that she received over $60,000 for services rendered over a period of one and a half years at Parkview—is in sharp contrast to her testimony that she was a "sucker" to get involved in the first place (R. 170a).

2. Against this factual background, the contentions of petitioners are seen to be without substance. Berryman's testimony was not, as petitioners contend (Pet. 6), substantially at variance with his pre-trial statements. His testimony was in direct conflict with that of petitioners and thus presented the trier of fact with a pure question of credibility, which the

court resolved against petitioners. This determination was certainly not clearly erroneous. Petitioners' version was inherently incredible, and Berryman's testimony in its most important aspect—the alleged receipt of $60,000 from Reed—was corroborated by independent proof that in 1958 Berryman had no cash and was in debt but that by July 1959 the debts had been paid (R. 51a, 60a, 37b-41b, 41b-49b, 52b-56b). The fact that Miss Reed had made a will to take care of Frazier in the event of her death, but that Frazier had not reciprocated by making a will in her favor (R. 99b), gave further support to the inference that the disputed $60,000 came from Frazier.

Petitioners' remaining contention (Pet. 6-7)—that Miss Reed could not properly be convicted of aiding and abetting Frazier in evading his taxes by filing a false return because it was not shown that she had anything to do with the filing—rests on a misreading of the indictment. The allegation in the indictment relating to the filing of a false return is not properly to be read as spelling out the details of Reed's participation in the offense but merely as specifying the means by which Frazier committed the offense. The nature of Reed's participation is detailed in the bill of particulars, which alleges that it consisted in her "permitting [Frazier] to hold assets and make expenditures in her name [and] by cooperating with him in the concealment of his ownership of assets held in her name" both during the taxable years involved and during the investigation which

followed (R. 15a). The proscription in Section 7201 of the Internal Revenue Code of 1954 and its predecessors of wilful attempts to evade a tax "in any manner" is plainly broad enough to cover such conduct. *United States* v. *Johnson*, 319 U.S. 503, 518.[1]

There is no conflict between the case at bar and *Vloutis* v. *United States*, 219 F. 2d 782, 790 (C.A. 5), or *Bentham* v. *United States*, 215 F. 2d 472, 473 (C.A. 5). Those cases had nothing to do with aiding and abetting. They involved situations where husbands had been convicted of wilfully attempting to evade their wives' taxes by "filing and causing to be filed" false and fraudulent returns on behalf of the wives but it had not been shown that the husbands had had anything at all to do with the filing of the returns.

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[1] "* * * [A]s a matter of evidence as well as a matter of pleading, the court [below] was dominated by the notion that the co-defendants did not aid and abet Johnson if they actually did not share in the making of his false return on each March 15th. The nub of the matter is that *they aided and abetted if they consciously were parties to the concealment of his interest in these gambling clubs of which they themselves pretended to be proprietors.* Evidence of conduct, acts and admissions, amply warranted the trial court to send the substantive counts against the aiders and abettors to the jury." *United States* v. *Johnson, supra*, 319 U.S. at 518 (emphasis added).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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